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IN THE

Supreme Court of the United States

October Term, 1951.

No. 414.

SAMUEL MANDEL, Administrator of the Estate of ROBERT WILLIE DILLEHAY, JR., Deceased,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITION OF SAMUEL MANDEL, ADMINISTRATOR, FOR RE-HEARING

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.

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To the Honorable the Justices of the Supreme Court of the United States:

The petition of Samuel Mandel, as Administrator of the Estate of Robert Willie Dillehay, Jr., deceased, petitioner in the above entitled cause for a rehearing and reconsideration of the decision rendered by your Honorable Court on May 26, 1952, respectfully represents:

1. The basic issue in this case was whether or not the Compensation Act provided the exclusive remedy for public vessel seamen. This Court conceded that the literal language of the statutes supported petitioner's claim under the maritime law and that the legislative history was not inconsistent with that view. Notwithstanding that, however, this Court concluded that since federally employed seamen on government merchant vessels did not have an election to choose between the Compensation Act and the

maritime remedies, it would be unfair to give the federally employed seamen on public vessels such an election. The logical conclusion from this reasoning would be to take away the right of election from the public vessel seamen and place them on the same footing with the other government employed seamen. And this construction would be the natural consequence of the literal language of the statutes. However, your Honorable Court failed to follow its reasoning to its logical conclusion, but instead, concluded that since the public vessel seamen should not have an election of remedies the Compensation Act must be the exclusive remedy. This conclusion is not only a non sequitur but it throws the entire system of law into a state of chaos. The finding that public vessel seamen are not entitled to an election of remedies does not even remotely imply that the Compensation Act is exclusive. It simply means that these seamen do not have a choice of remedies. If the basis for the Court's decision has any relevancy at all it would require the opposite result than that found by the Court. It was in fairness to Federally employed merchant seamen that the Court concluded there is no right to an election. If this means anything at all it means that public vessel seamen should be given the same rights as the other government seamen, no more, no less. Anything different would be unfair to one group or the other and since this Court adopted the standard of fairness as the test, the remedies of both groups should be equalized in order to conform to that test. The conclusion which this Court reached fails utterly to conform with the formula which it prescribed.

Had the Court correctly applied its own formula and made the remedies the same, in the interest of fairness, that result would have been entirely consistent with and the natural result of the clear language of the statutes in question. As the matter now stands, the statutes are emasculated by an unnatural and incompatible construction, in addition to the unfairness resulting to the public vessel seamen.

The public vessel seamen are drawn from the same pool as are other government seamen. Their work is the same and working conditions are identical. When they are drawn from the pool and assigned to work they are totally unaware of whether the government vessel to which they are attached is a public vessel or a merchant vessel. In fact, there has not been any authoritative expression to determine what is a public vessel and which is merchant. In any event, the personnel who man both are from the same source and are subject to the same working conditions in both cases. There is therefore every reason to make their remedies consistent. Since this Court has stated that considerations of fairness preclude the public vessel seamen from exercising a choice of remedies because other government seamen are limited to the maritime remedies, the same considerations of fairness should afford the maritime remedies to the public vessel seamen.

2. The other reason relied on by this Court in support of its conclusion that the Compensation Act is the exclusive remedy for public vessel seamen, is that this construction of the statutes would make a "workable, consistent and equitable whole", citing *Feres v. United States*, 340 U. S. 135. The conclusion of the Court in this case is directly in conflict with the principle. The *Feres* case involves a member of the armed forces, and it was held that the claimant there should be afforded the same remedies which are available to other military personnel. Those personnel are not governed by the Compensation Act for Federal employees. Congress has enacted special provisions such as disability benefits, pensions, insurance and other benefits. These enactments apply to all military personnel and they may not be impaired by the Compensation Act. It was the uniform application of these benefits for injuries and disabilities to all military personnel, which this Court held in the *Feres* case "to make a workable, consistent and equitable whole." A fortiori, all civilian seamen should be accorded the same uniform remedies re-

gardless of what branch of the Government happens to employ them. In the last war the ships which were operated by the War Shipping Administration performed exactly the same services as those operated by the Army Transport Service. They sailed in the same convoys and were used interchangeably in one service or another. The civilian seamen who manned those vessels, as has already been indicated, all came from the pool maintained by the War Shipping Administration and they were assigned to all government vessels by that agency. There is no valid reason why these men should be governed by different laws. If the test of workability, consistency and equity be applied then clearly these men should be governed by the same rules.

Under the decision of this Court the entire system is thrown into an unworkable, inconsistent and inequitable state. Civilian seamen employed on vessels operated by the National Shipping Authority are governed by the maritime law, while seamen employed on vessels operated by some other governmental agency are limited to the remedy under the Compensation Act and are precluded from the maritime remedies. This segment of the seamen would thus be governed by the laws applicable to employees on land whose problems and working conditions are entirely different. It is not only an impractical arrangement but it is completely lacking in consistency and it is most inequitable to the public vessel seamen who are deprived of the maritime benefits.

This Court was thus clearly mistaken in holding that the Compensation Act must be construed to be exclusive in order to effect a workable, consistent and equitable whole. That construction accomplishes exactly the opposite result. From this aspect, if the statutes involved are interpreted in their literal and normal manner the desired objective is achieved, since there will be complete uniformity of remedy among all government seamen and this will indeed make for a workable, consistent and equitable whole.

3. This Court concedes that the Shipping Act of 1916 and the Suits in Admiralty Act of 1920, gave a right of action under the maritime law to federally employed seamen against the government. This presupposes that the Compensation Act was not exclusive as to these seamen. The Public Vessels' Act came along in 1925 and it incorporated into it the Suits in Admiralty Act. The necessary conclusion is that the Public Vessels' Act has the same scope as the Suits in Admiralty Act and this interpretation attached to the Act from its inception.

After the outbreak of World War II the Government requisitioned and operated practically all vessels, and the crews became federal employees. It must also be noted that all seamen were recruited through the War Shipping Administration. That agency maintained a pool of seamen and furnished the crews for all vessels including public vessels as well as merchant vessels. The crews for Army Transport vessels were likewise engaged through the War Shipping Administration.

Because it was anticipated that, as federal employees, this group of seamen might become entitled to the benefits of the Civil Service Retirement Act, the United States Employees' Compensation Act, and other legislation applicable to federal employees, and because it was recognized that these seamen were already adequately provided for under the maritime law, the Congress enacted the *Clarification* Act to *clarify* the status of these seamen and avoid an overlapping of remedies. The Clarification Act therefore was designed to prevent an election of remedies and to restrict these seamen to the enjoyment of their maritime rights. This Act covered virtually all federally employed seamen on public as well as merchant vessels since they were all engaged through the War Shipping Administration.

This was a clear manifestation of congressional intent to make a consistent, workable and equitable remedy for all federally employed seamen, without regard to the nature of the vessels to which they were assigned and upon

which they served. That Act demonstrated further the intent to preserve the maritime rights to the seamen and to prevent the exercise of any election to forego those rights and seek the remedies generally accorded to non-maritime employees of the government. The Clarification Act did not create any new rights or obligations. It simply "clarified" the existing rights and obligations.

The decision of this Court would place certain seamen engaged on public vessels, who were not engaged through the War Shipping Administration, in a category separate than that of other public vessel seamen and that of the remaining federally employed seamen. The reasoning behind this decision is fallacious and fails to withstand analysis. This Court said that because federally employed seamen engaged by the War Shipping Administration do not have an election between the maritime remedies and the Compensation Act, then public vessel seamen who are not engaged through the War Shipping Administration are limited to the remedy under the Compensation Act. The logical conclusion would have been to limit the latter public vessel seamen to the same remedies applicable to the other federally employed, including public vessel, seamen. This conclusion conforms with the standard set up by this Court for the determination of the problem. First it makes for a workable, consistent and equitable whole, since it applies uniformly and fairly to the entire group of employees within the category, and because it does not give any one segment of the group an unfair advantage over the other.

Equally important is the fact that in this view, the Compensation and Public Vessels' Acts may be read in the ordinary normal fashion and not in disregard of the plain literal language of those statutes.

The decision under consideration transcends the cases now before this Court. Hundreds of cases where verdicts have already been rendered will be nullified and in countless future cases valuable rights will be lost where the Congress fully intended the maritime remedies to provide an

adequate recovery. We earnestly submit that the further consideration by this Court is peculiarly merited in view of the fact that the pertinent principles have not been fully explored.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.

I hereby certify that the within petition is filed in good faith and not for purpose of delay.

ABRAHAM E. FREEDMAN.